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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CORY WILSON et al.,

Plaintiffs and Appellants,

v.

STRUCTURAL PEST CONTROL  
BOARD,

Defendant and Respondent.

B281171

(Los Angeles County  
Super. Ct. No. BS154352)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Mary H. Strobel, Judge. Affirmed.

Cory Rico Wilson, in pro. per., for Plaintiff and Appellant  
Cory Rico Wilson dba Satellite Pest Control.

Ricardo Alonso Wilson, in pro. per., for Plaintiff and  
Appellant Ricardo Alonso Wilson.

Xavier Becerra, Attorney General, Linda K. Schneider,  
Assistant Attorney General, Linda L. Sun and Helene E. Rouse,  
Deputy Attorneys General, for Defendant and Respondent  
Structural Pest Control Board.

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Cory Wilson dba Satellite Pest Control and his father Ricardo Wilson (collectively, the Wilsons) appeal in propria persona from a judgment entered after the superior court denied their petition for a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5. The relief they sought was an order directing the Structural Pest Control Board (the Board) to set aside its decision revoking the company registration certificate of Satellite Pest Control (SPC) and revoking Cory's and Ricardo's individual pest control operator licenses. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Cory's and Ricardo's Pest Control Licenses*

Structural pest control is the control of household pests and wood-destroying pests or organisms (WDO's) that invade homes and other structures. (Bus. & Prof. Code, § 8505.)<sup>1</sup> Section 8500 et seq., the Structural Pest Control Act, "authorizes the Board to regulate, administrate, license, and discipline structural pest control operators." (*Americana Termite Co. v. Structural Pest Control Bd.* (1988) 199 Cal.App.3d 228, 231-232.)

At the time of the events in question, Cory had a "Branch 2" license from the Board that authorized him to practice control of household pests. (§ 8560, subd. (b)(2).) Cory did not have a "Branch 3" license, which is required to practice pest control of WDO's such as drywood termites. (§ 8560, subd. (b)(3).) Thus, Cory was not authorized to perform inspections, issue reports, make recommendations, or implement any corrective

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<sup>1</sup> All undesignated statutory references are to the Business and Professions Code.

measures relating to termites or other WDO's. Ricardo, however, had a valid Branch 3 license during the period in question. A "Branch 1" license is necessary to conduct fumigations with poisonous gases. (§ 8560, subd. (b)(1).) Neither Cory nor Ricardo had a Branch 1 license.

In 2007, a company registration certificate was issued in Branch 2 to Satellite Pest Control, the fictitious name Cory gave his pest control business. In 2009, SPC's company registration was upgraded to include Branch 3, with Ricardo designated as its "Branch 3 Qualifying Manager."

## *2. SPC Termite Inspections at the Property*

On May 14, 2010, SPC performed a WDO inspection at a house (the Property) owned by Gabriela Vazquez and prepared a WDO inspection report. The May 14, 2010 report stated the inspector found evidence of drywood termite fecal pellets, cellulose debris and decay fungi in the substructure. Further, the inspector noted evidence of drywood termites on the patio and evidence of termite fecal pellets in the attic and the garage. Finally, the report documented evidence of drywood termites and decay fungi on the exterior rafter tails and fascias. The report stated the "primary recommendation" was "to fumigate the entire structure with a lethal gas"; the "secondary recommendation" was to treat the entire substructure and the attic with borates and to drill into termite galleries and "foam treat" with an insecticide. In addition, the recommendations included removing or treating the cellulose debris from the substructure; scraping and chemically treating the decay fungi; and treating the garage and the exterior with borates and "drilling and treating any noted infestation" with insecticide.

Vazquez engaged SPC to perform the recommended treatments to eradicate the WDO's. Cory later testified at the administrative hearing that Vazquez chose the borate treatment in lieu of fumigation after Ricardo explained the difference to her. Thus, SPC did not fumigate the Property, but instead it treated the substructure, attic, garage and the "entire house" with borates.

On September 4, 2010, SPC conducted an additional inspection because Vazquez was selling the Property and wanted a "clearance" to provide to the escrow company. The report, signed by Ricardo, stated there was evidence of drywood termite fecal pellets on the substructure flooring, attic, patio, garage and interior, but the evidence appeared to be "inactive." The report noted the Property had previously been treated for drywood termites. Cellulose debris in the substructure was noted at the time of the additional report, and SPC's recommendation was to remove or treat it.

### *3. Sale of the Property and the New Owner's Complaints to the Board*

On November 4, 2010, Tim Jakcsy purchased the Property from Vazquez. Jakcsy testified that he received a copy of SPC's inspection report with the escrow papers, and, based on that report, he concluded the Property had been treated for termites and was free of any infestations.

From December 2010 to February 2011, Jakcsy did some remodeling of the Property. He remodeled the interior of the television room; installed new drywall on all the walls and ceilings; removed stair rails; repainted; and renovated the wood floors. The only area where new wood was brought in was in the television room where a closet was removed. Jakcsy began

noticing “termite droppings” throughout the house after he purchased it, but he thought these were old droppings that were shaken loose due to vibrations from the remodeling work.

Jakcsy hired a pest control company to spray for ants and cockroaches. On July 11, 2011, the inspector, Manuel Pech, told Jakcsy that he saw “a lot of evidence of termite infestation.” Jakcsy showed the inspector SPC’s report, and the inspector told him the house should have been fumigated, not merely treated. Pech’s July 7, 2011 report noted evidence of drywood termites and loose cellulose debris in the substructure and stated the “infestation appears to extend into the inaccessible floor area.” The report recommended fumigation and removal of the debris and termite pellets.

On August 8, 2011, Jakcsy filed a complaint with the Board alleging SPC had failed to properly treat the Property for termite infestation.<sup>2</sup>

#### *4. SPC’s Subsequent Inspections and August 30, 2011 Report*

On August 23, 2011, the Board notified SPC of Jakcsy’s complaint and requested a response within 10 days. Jakcsy testified that Cory came to the Property alone on August 29, 2011, to inspect the Property. While Cory was under the house, Jakcsy detected the sound of aerosol spray, but when Cory

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<sup>2</sup> The Wilsons erroneously contend that Jakcsy waited two years after the remodel and two years after he noticed termite droppings to file his complaint with the Board. Substantial evidence demonstrates that Jakcsy commenced the remodel in December 2010, first noticed the termite droppings after the remodel had commenced, and filed the complaint in August 2011, one month after Pech informed him of an active termite infestation.

emerged he was not holding any can. Jakcsy observed Cory appearing to surreptitiously remove an aerosol can from his crawl suit and deposit it in his truck. When Jakcsy confronted Cory about the can, Cory first stated he had sprayed a nest where he saw some termites; then he recanted and said he was spraying around just in case, and he told Jakcsy there was no evidence of any active infestation.

Jakcsy testified that on August 30, Cory returned (again alone) to do an additional inspection of the attic, patio and garage, which he had not inspected on August 29. Jakcsy pointed out termite droppings in the garage, and they dusted away the droppings so it could be determined later if fresh droppings appeared in that area. Cory again told him there was no evidence of infestation.

Cory wrote a letter to the Board in which he stated, “On August 29, 2011 I inspected the substructure and found no activity; the droppings that was [sic] noted were old and it was in the exact spot where we treated that was noted on our report.” SPC’s report from the August 30, 2011 inspection, signed by Ricardo, stated termite pellets were found in the substructure and the garage, but the report represented the infestation was “inactive.”

##### *5. The Board’s Investigation and SPC’s November 9, 2011 Report*

The Board assigned its inspector, Steve Smith, to investigate Jakcsy’s allegations. Smith inspected the Property for three hours on October 31, 2011, and he prepared a 36-page report that included 70 color photographs of his findings. Smith reported seeing evidence of drywood termites in the substructure, the garage and the house eaves. He noted seeing a live termite in

the house eaves. He also reported evidence of termite damage in the substructure, attic, garage, patio and house eaves. In addition, he found decay fungi damage to the patio, house eaves and a kitchen window. Further, there was evidence of excessive moisture conditions in the substructure and the patio.

Smith testified at the administrative hearing that an active infestation at the Property had been ongoing for at least two to four years. He opined that most of the conditions and damage he found during his inspection existed at the time of SPC's May 14, 2010 inspection and should have been reported, but were not. Further, SPC should have recommended fumigation, not localized borate treatment.

Smith attempted to obtain copies of SPC's records regarding the Property. When he went to SPC's address on record with the Board, a security guard informed him SPC had moved out two to three weeks earlier. Smith spoke by phone with Cory, who agreed he and Ricardo would meet Smith at a restaurant on November 1, 2011 and bring SPC's completion notice for the Property and any other inspection reports. Although that meeting took place, Cory and Ricardo did not bring the requested documents.

On November 9, 2011, the Board sent the Wilsons a letter, including a "report of findings" that identified 19 violations of governing laws and regulations. The letter directed the Wilsons to bring the Property into compliance within 30 days and advised them of the possibility that the Board could bring disciplinary proceedings against them. The Wilsons responded by disputing Smith's observations and conclusions.

On November 21, 2011, Ricardo conducted an inspection of the Property and concluded in a report there was cellulose debris

in the substructure that was treated with borates; evidence of “cosmetic” termite damage to several rafters on the porch and the attic; termite fecal pellets on a work bench in the garage; evidence of excessive moisture conditions; and some fungi damage on the porch and exterior. According to Smith, the Wilsons did not address the violations Smith reported or bring the Property into compliance.

6. *The Accusation Against the Wilsons*

On July 26, 2012, the Board filed an accusation against the Wilsons<sup>3</sup> alleging they were subject to discipline for violating various provisions of the code regulating structural pest control operators, including sections 8516, 8550, 8613, 8622, 8638, 8641, 8650 and 8652, as well as sections 1990 through 1993 of the California Code of Regulations, title 16.

The accusation alleged that the Wilsons: (1) “failed to exterminate the evidence of drywood termites” reported in the May 14, 2010 inspection report, due to SPC’s use of local chemical treatment as opposed to fumigation; (2) failed to complete work represented to have been completed; (3) caused Cory, who was not licensed to do termite inspections, to conduct such inspections; (4) failed to file accurate reports with the Board; (5) acted in the capacity of a registered company under a name (Satellite Pest Management Services) different from that set forth in the company registration (Satellite Pest Control); (6) issued the May 14, 2010 inspection report without the name, license number and signature of a properly licensed inspector;

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<sup>3</sup> Besides the Wilsons, the accusation also named Bobby Burgess, an SPC employee, as a defendant. The accusation against Burgess was subsequently dismissed.



and (7) failed to notify the Board in writing of a change in the location of its principal office within 30 days of the change.

The accusation also alleged that Ricardo failed to report evidence of drywood termites, termite damage, cellulose debris, decay fungi and excessive moisture conditions in various portions of the house, including the substructure, attic, garage, patio and other areas of the Property. Further, it alleged Ricardo failed to make the proper findings and recommendations to treat the termite-related issues, including: administering an “all-encompassing method of treatment” such as fumigation as opposed to a localized chemical treatment; covering or removing the accessible evidence of infestation; further inspection and issuance of a supplemental inspection report regarding the areas of the garage that were inaccessible due to storage; removal of the cellulose debris; and remedying the excessive moisture conditions.

The accusation sought the revocation or suspension of SPC’s company registration and Ricardo’s and Cory’s respective operator’s licenses. It also sought an order directing the Wilsons to pay restitution for Jakcsy’s damages and to pay the Board’s reasonable costs of investigation and enforcement.

#### *7. Administrative Hearing*

Administrative law judge Erlinda G. Shrenger (ALJ) presided over a five-day hearing that concluded on April 30, 2014. Key witnesses included Ricardo, Cory, Jakcsy and Smith. The ALJ issued her proposed decision on September 30, 2014, finding the Board had proved the causes for discipline alleged against the

Wilsons, with one exception.<sup>4</sup> The ALJ found “[t]he more persuasive evidence” was from Smith, who testified credibly regarding his findings and opinion that the Property had an active infestation of termites that was present at the Property on or before May 14, 2010, and that SPC should have fumigated the Property. The ALJ determined that Smith’s opinions were consistent with the applicable law and other evidence in the record, including Smith’s color photographs from his inspection and Jakcsy’s testimony.

In the proposed decision, the ALJ ordered that SPC’s company registration certificate be revoked. Further, the ALJ ordered that Cory’s and Ricardo’s licenses be revoked and that both be prohibited from serving as officers, associates or managers of any pest control company while their licenses were revoked. The ALJ found this level of discipline necessary to protect the public because the evidence demonstrated that Ricardo and Cory “do not understand and appreciate their responsibilities as licensees of the Board. They fail to understand the laws and regulations governing structural pest control. They refuse to acknowledge they committed any violations of the Board’s laws and regulations. There is no evidence that [they] have made any changes in their business practices.” The ALJ further ordered the Wilsons to pay the Board \$15,813 for its investigation and prosecution costs as a condition for relicensure or reinstatement of their registration and licenses, in the discretion of the Board.

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<sup>4</sup> The only allegation the ALJ found not proven was that the Wilsons failed to issue reports on the form approved by the Board.

On October 23, 2014, the Board issued its decision and order adopting the ALJ's proposed decision. The Board subsequently denied the Wilsons' motion for reconsideration.

8. *The Wilsons' Petition for Writ of Administrative Mandamus*

On March 11, 2015, the Wilsons filed a petition for writ of administrative mandamus directing the Board to set aside its decision on the grounds that (1) the Board's decision was not supported by the findings, and (2) the findings of the ALJ, adopted by the Board, were not supported by the evidence in that: (a) Ricardo performed proper inspections of the Property and completed proper reports; (b) SPC was not operating under a name different from the one approved; (c) Cory did not perform the inspections at issue; (d) SPC timely informed the Board of its change of address; and (e) SPC used the correct inspection forms.

Following briefing by the parties and a hearing on December 15, 2016, the superior court issued its decision denying the writ. The court entered judgment in the Board's favor on January 10, 2017. The Wilsons timely appealed.

## DISCUSSION

### A. *Standard of Review*

In an administrative mandamus proceeding to review an agency's revocation of a professional license, the superior court examines the administrative record for errors of law and exercises its independent judgment on the evidence disclosed in a limited trial de novo. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 788-789; *Aantex Pest Control Co. v. Structural Pest Control Bd.* (1980) 108 Cal.App.3d 696, 700-701.) In

exercising its independent judgment, the superior court “must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Fukuda*, at p. 817.) The superior court “does not defer to the fact finder below and accept its findings whenever substantial evidence supports them. Instead, it must weigh all the evidence for itself and make its own decision about which party’s position is supported by a preponderance. [Citation.] The question is not whether any rational fact finder could make the finding below, but whether the reviewing court believed the finding actually was correct.” (*Coastal Environmental Rights Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 188; see *Alberda v. Board of Retirement of Fresno County Employees’ Retirement Assn.* (2013) 214 Cal.App.4th 426, 433 [in employing its independent judgment, trial court reweighs the evidence and may substitute its own findings for those of the agency, including findings on the credibility of witnesses].)

“After the trial court has exercised its independent judgment upon the weight of the evidence, an appellate court need only review the record to determine whether the trial court’s findings are supported by substantial evidence.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 144, fn. 10; see *Thole v. Structural Pest Control Bd.* (1974) 42 Cal.App.3d 732, 736 [“substantiality, not weight, is the standard of review in this court”].) “We do not reweigh evidence or assess the credibility of witnesses on review for substantial evidence.” (*San Diego Gas & Electric Co. v. Schmidt* (2014) 228 Cal.App.4th 1280, 1292.)

*B. The Superior Court Properly Made Its Own  
Credibility Assessments of the Witnesses, to Which  
We Defer*

The Wilsons challenge the credibility determinations that have been made regarding Ricardo, Cory, Smith and Jakcsy, focusing in particular on the superior court's failure to ascertain that Smith's bias against the Wilsons renders Smith's testimony and opinions invalid.<sup>5</sup> In reviewing the superior court's denial of the Wilsons' writ petition, however, we do not reassess the credibility of these witnesses. (*San Diego Gas & Electric Co. v. Schmidt, supra*, 228 Cal.App.4th at p. 1292.) Our review with respect to credibility assessments is limited to determining whether the trial court properly made its own determinations of the witnesses' credibility. We conclude the superior court did so.

The superior court found Smith to be a credible witness. The court noted Smith's "extensive experience" in the pest control field. Smith had done "tens of thousands of inspections" when he worked for pest control businesses, and, since joining the Board as an inspector 11 years earlier, he had performed approximately 40 investigations and regularly completed continuing education courses. The court found that at the administrative hearing Smith "testified persuasively about 70 color photographs he took during his inspection of the Property which visually show the many items SPC failed to report and treat." The court found the Wilsons had not demonstrated bias or "ulterior motives" on Smith's part that would undermine his credibility as a witness or

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<sup>5</sup> In addition to arguing that Smith was biased, the Wilsons also argue on appeal that the ALJ was biased against them. However, having failed to make this argument before the superior court, they have forfeited it.

the validity of his opinions. The court likewise found Jakcsy's testimony was credible and supported Smith's findings.

By contrast, the court found Ricardo's and Cory's testimony to be inconsistent and less persuasive. Ricardo admitted there was a drywood termite infestation as of May 14, 2010, but denied there was an active infestation when he inspected the Property on September 4, 2010, August 30, 2011 and November 21, 2011. Although Ricardo agreed Smith's photographs taken on October 31, 2011 showed cellulose debris and termite fecal pellets at the Property, Ricardo testified that he did not see those conditions during his August 30, 2011 inspection. The court concluded the Wilsons had not provided a persuasive explanation of how those conditions could have arisen between August 30, 2011 and October 31, 2011. The court inferred that, contrary to Ricardo's testimony, the conditions were indeed present on August 30, 2011. Further, the court found Ricardo's credibility was impeached by his testimony that Cory went to the Property on August 29, 2011 not to inspect for termites (which would have been beyond the scope of his Branch 2 license) but rather only for "regular pest control." The court determined Ricardo's statements were inconsistent with Cory's letter to the Board in which Cory recounted that he had inspected the Property on August 29, 2011 and found no evidence of a termite infestation.

As for Cory, the court concluded his credibility was harmed by the fact he conducted a termite inspection on August 29, 2011, despite not having a Branch 3 license. The court found that Cory's stealthy behavior during that August 29, 2011 inspection, described by Jakcsy in his testimony, also detracted from his credibility. Further, the court determined Cory testified inconsistently as to whether there was an active termite

infestation as of SPC's first inspection on May 14, 2011, and as to whether SPC filed a completion report with the Board with respect to the Property. We may not reweigh these credibility determinations and instead defer to them.

*C. The Superior Court's Findings Are Supported by Substantial Evidence*

*1. Ricardo and SPC failed to report items and make proper recommendations in the May 2010, August 2011 and November 2011 reports*

Substantial evidence established that an active drywood termite infestation was present at the Property as of SPC's May 2010 inspection and report. Further, Smith's report and testimony, buttressed by Jakcsy's testimony, support the conclusion that this infestation remained as of October 31, 2011, contrary to the representations in SPC's August and November 2011 reports. The superior court concluded that Jakcsy's remodeling work from December 2010 to February 2011 did not lead to a new infestation of drywood termites. This finding is supported by substantial evidence that the remodeling did not affect the substructure, attic or other areas where evidence of a termite infestation was found.

Substantial evidence supports the superior court's determination that Ricardo and SPC failed to report items and make proper recommendations in the May 2010, August 2011 and November 2011 reports regarding the Property, in violation of sections 8516 and 8638. Under those provisions, WDO inspection reports must identify: (1) the locations of any infestations or infection by WDO's; (2) any conditions deemed likely to lead to infestation or infection, including excessive cellulose debris and excessive moisture conditions; and (3) any

wood damage from WDO's. (§ 8516, subd. (b)(6), (7); Cal. Code Regs., tit. 16, § 1990, subd. (a)(3), (4); § 1990, subd. (b)(3), (5).) Smith's report and testimony support the superior court's findings that Ricardo and SPC failed to report: (1) the full extent of evidence of drywood termites, termite damage and excessive moisture conditions in the substructure; (2) evidence of termites and termite damage in the attic; (3) the full extent of evidence of termites and termite damage in the garage; (4) evidence of termites, termite damage, and excessive moisture conditions on the patio; (5) decay fungi damage at the kitchen window; and (6) evidence of termites, termite damage and decay fungi damage in the house eaves.

Further, Smith's report and testimony constitute substantial evidence that SPC failed to make proper recommendations regarding the evidence of WDO's that *was* reported in the May 2010, August 2011 and November 2011 inspection reports. Section 8516, subdivision (b)(10), requires inspection reports to include "[r]ecommendations for corrective measures." The accompanying regulation further provides that corrective measures include "[e]xterminat[ing] all reported wood-destroying pests." (Cal. Code Regs., tit. 16, § 1991, subd. (a)(8).) "If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either: [¶] (A) enclose the structure for an all encompassing treatment [using poisonous gases], or [¶] (B) use another all encompassing method of treatment which exterminates the infestation of the structure, or [¶] (C) locally treat by any or all of the following: [¶] 1. exposing the infested area(s) for local treatment, [¶] 2. removing the infested wood, [¶] 3. using another method of treatment which exterminates the infestation." (Cal. Code Regs.,



tit. 16, § 1991, subd. (a)(8)(A)-(C).) Further, “[i]f any recommendation is made for local treatment, the report must contain the following statement: ‘Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.’” (Cal. Code Regs., tit. 16, § 1991, subd. (a)(8)(C)(3).)

SPC’s May 2010 report made a “primary recommendation” “to fumigate the entire structure with a lethal gas,” and gave a “secondary recommendation” to locally treat the substructure, attic and other infested areas with borates or insecticide. Under the applicable regulations, any secondary recommendations that are made shall be accompanied by the caveat “that they are below standard measures,” as well as by a “full explanation” of why these secondary recommendations are being made. (Cal. Code Regs., tit. 16, § 1992.) “If secondary recommendations are performed, any letter of completion, billing or other document referring to the work completed, must state specifically which recommendations were secondary and below standard and specify the name of the person or agency requesting completion of the secondary recommendations.” (Cal. Code Regs., tit. 16, § 1992.) SPC’s May 2010 report did not include these advisements, and there is no evidence that SPC included them in any other document. Further, despite the evidence that the termite infestation extended to inaccessible areas, SPC’s report did not contain the mandatory advisement that choosing the secondary option might not result in the termites being exterminated. Thus, SPC’s report failed to comply with the requirements for proper recommendations for corrective measures.

*2. The Wilsons failed to complete work and to file completion reports*

“Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs . . . is a ground for disciplinary action.” (§ 8638; see *Thole v. Structural Pest Control Bd.*, *supra*, 42 Cal.App.3d at p. 739.) Substantial evidence supports the determination that SPC failed to complete work in that it never addressed the cellulose debris in the Property’s substructure. SPC documented debris in the substructure in its May 2010 report and recommended removing or treating it. SPC’s September 2010 report repeated the exact same recommendation, suggesting no corrective actions were taken with respect to the debris after the May 14, 2010 report. Ricardo then agreed in his testimony that the photographs taken by Smith on October 31, 2011 showed cellulose debris in the substructure that should have been removed. This evidence demonstrates SPC failed to complete the remedial actions necessary to address the debris and supports the finding of a violation of section 8638.

Substantial evidence also supports the superior court’s finding that Ricardo and SPC are properly subject to discipline by the Board for their failure to file a notice of work completed after performing WDO treatment on the Property pursuant to the recommendations of SPC’s May 14, 2010 report. Section 8518, subdivision (a), provides that a company that performs work under a contract must prepare and provide the property owner within 10 business days a “notice of work completed and not completed.” The notice must also be filed with the Board. (Cal. Code Regs., tit. 16, § 1996.2.) The purpose of such a notice is to

create a record of what corrective measures were or were not taken following the termite company's recommendations in its report. Smith testified he searched the Board's records for notices of work completed by SPC but found none. The Wilsons have not shown that it was error to impose discipline on Ricardo and SPC due to their failure to document the work performed after their May 2010 report.

*3. Cory performed at least one termite inspection without a Branch 3 license*

It is undisputed that Cory did not have a Branch 3 license in 2010 and 2011. "It is unlawful for any individual to . . . act in the capacity of . . . or assume to act as, an operator or a field representative . . . , or to engage or offer to engage in the practice of structural pest control, unless he or she is licensed under this chapter." (§ 8550, subd. (a); see *Canterbury Termite Control, Inc. v. Structural Pest Control Bd.* (1989) 207 Cal.App.3d 422, 427.) Cory's August 29, 2011 letter to the Board about his inspection for termites on that date, and Jakcsy's testimony about the same, support the court's finding that Cory performed a Branch 3 inspection at the Property on August 29, 2011 without the proper license, in violation of section 8550.<sup>6</sup>

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<sup>6</sup> It remains unclear who performed the original May 14, 2010 inspection of the Property. SPC's May 2010 report did not comply with the requirement that it include the inspector's structural pest control license number. (Cal. Code Regs, tit. 16, § 1990, subd. (a)(1).) The face of the report shows a number that looks like a date on the line where the inspector's license number should be. Further, the inspector's name and signature are illegible.

*4. SPC was operating under an unregistered name  
and failed to notify the Board that it moved*

On March 10, 2006, Cory signed an application to register the business name “Satellite Pest Control.” The Board approved that name and issued a company registration certificate to “Satellite Pest Control.” However, the May 2010, August 2011 and November 2011 inspection reports were issued under the name “Satellite Pest Management Services,” and that name was used by the Wilsons in correspondence with the Board as well.

“Acting in the capacity of a licensee or registered company under any of the licenses or registrations issued hereunder except: [¶] (a) [i]n the name of the licensee or registered company as set forth upon the license or registration, or [¶] (b) [a]t the address and location or place or places of business as licensed or registered or as later changed as provided in this chapter is a ground for disciplinary action.” (§ 8650.) The superior court correctly found that the Wilsons violated this provision.

The Wilsons contend there was no evidence that any consumer was misled by the use of a different name for the business. However, as the superior court noted, the Wilsons failed to establish that consumer confusion is necessary to find a pest control business in violation of section 8560. The court also found, and we agree, that the Wilsons failed to show their noncompliance with section 8650 was excused because, according to Cory’s testimony, someone at the Board told him over the telephone that the company could operate under any name that included “Satellite” as part of it.

In addition, the court found the Wilsons violated former section 8613, which provided that “[a] registered company which changes the location of its principal office . . . shall notify the

registrar in writing of such change within 30 days thereafter.”<sup>7</sup> (Stats. 1960, ch. 3, § 3, p. 6, eff. Aug. 1, 1960.) Prior to 2011, SPC had designated its principal place of business as being 817 North Vine Street. When Smith attempted to visit the business during his investigation, he was told SPC had moved out several weeks earlier. The Wilsons presented no evidence that SPC timely notified the registrar of a new address for its principal place of business.

The Wilsons rely on a September 20, 2011 letter in which the Board wrote to Cory that the Board “received your letter regarding the change of address for [SPC].” That letter enclosed a request for change of address form and directed Cory to “[r]eturn the completed form to the Board along with the \$25.00 fee.” The Wilsons also point to SPC’s October 24, 2011 letter to the Board stating that SPC was changing its address from 817 North Vine Street and did not yet have a new address, but its mailing address (a post office box) remained the same. The Wilsons contend that SPC therefore complied with the requirement to notify the Board of its change of address.

However, as the superior court found, evidence that the Board knew SPC used a post office box to receive mail does not show compliance with section 8613, which requires SPC to keep the Board apprised of the location of its principal office, not its mailing address. Substantial evidence supports the finding that SPC did not identify the location of its principal office after

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<sup>7</sup> Effective January 1, 2015, section 8613 was amended to require businesses to notify the Board of a change of address “on a form prescribed by the board.” (Stats. 2014, ch. 560, § 29.) When SPC moved in 2011, this additional requirement was not in effect.

moving from Vine Street within the time limit proscribed by section 8613.

*D. The Wilsons Forfeited the Argument That the ALJ Erred By Excluding Evidence By Failing To Raise It in the Superior Court Proceeding*

After the parties' briefing in this appeal was complete, the Wilsons lodged with this court a property inspection report by Keywest Property Inspection Services. In their opening brief, the Wilsons contend the ALJ erroneously excluded this report from evidence at the administrative hearing; however, they failed to raise that claim of evidentiary error before the superior court and thus have forfeited the issue. In addition, in the superior court, the Wilsons moved to augment the record to include several documents, but the home inspection report was not one of them. Accordingly, the report is not part of the record we may consider on appeal, and we grant the Attorney General's motion to strike the exhibit.

The Wilsons also contend the ALJ erred by failing to enforce the subpoenas they issued to Pech and another home inspector to compel these witnesses' appearance at the administrative hearing. However, the Wilsons forfeited these claims of error by failing to raise them before the superior court.

*E. The Wilsons Do Not Attack the Propriety of the Specific Discipline Imposed*

Although the Wilsons attack the bases for discipline imposed against them, they do not argue that the penalties imposed were not warranted for the violations. In any event, "[n]either a trial court nor an appellate court is free to substitute its discretion for that of an administrative agency concerning the degree of punishment imposed." (*California Real Estate Loans*,

*Inc. v. Wallace* (1993) 18 Cal.App.4th 1575, 1580; see *Barber v. State Personnel Board*. (1976) 18 Cal.3d 395, 404 [same].) We have no reason to question the Board's determination that the proper disciplinary sanctions were to revoke Ricardo's and Cory's licenses and SPC's company registration.

### **DISPOSITION**

The judgment is affirmed. The Board is to recover its costs on appeal.

STONE, J.\*

We concur:

PERLUSS, P. J.

SEGAL, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.